PUBLIC PROSECUTOR

v.

RAJA PANDIAN A/L ARUNACHALA PANDAHAM

HIGH COURT, TAIPING
DATO' HJ. ABDUL MALIK B. HJ. ISHAK JC
[CRIMINAL REVISION NO. 43-6-93]
20 APRIL 1993

CRIMINAL LAW & PROCEDURE: Preliminary inquiry - Accused charged for murder under s. 302 Penal Code - At close of preliminary inquiry, Magistrate amended charge to one under s. 304 Penal Code and directed Accused to be tried before Sessions Court - Case transferred to Sessions Court - Whether Magistrate exercised discretion in accordance with law - Section 140(1)(b) CPC - Deputy Public Prosecutor applied to High Court to exercise its revisionary powers to set aside order made by learned Magistrate as Accused ought to have been committed to High Court for trial under s. 302 Penal Code - Four options available to Magistrate to order at end of preliminary inquiry (Sections 139, 140, 141, 142, 143 and 177 Criminal Procedure Code) - Sections 63 and 100 Subordinate Courts Act 1948 - Sections 302 and 304 Penal Code.

In this case, the Accused was charged at the Magistrate's Court, Kuala Kangsar for an offence under s. 302 of the Penal Code for the murder of Subramaniam s/o Ponnusamy on 7 May 1988 at about 8.00 p.m. in front of house number 344 Kampong Che'gu Yahya, Kuala Kangsar. At the close of the preliminary inquiry, the learned Magistrate amended the said charge to one under s. 304 of the Penal Code. Accordingly, she directed that the Accused be tried before the Sessions Court and in the process made an order of the transfer of the case to the Sessions Court.

As the prosecution was not satisfied with the order made by the learned Magistrate, the learned Deputy Public Prosecutor applied to the High Court, Taiping to exercise its revisionary powers to set aside the order of the learned Magistrate. The learned DPP contended that the learned Magistrate had erred in law in not committing the Accused to the High Court for trial as there are sufficient grounds to commit the Accused for an offence under s. 302 of the Penal Code and urged the

High Court to direct the learned Magistrate accordingly.

Held:

[1] At the end of the prosecution's case (in the preliminary inquiry) after hearing comments by the Accused or his Advocate as provided for under s. 151(i)(b) of the CPC the presiding Magistrate has four options open to him depending, of course, on the circumstances of the case.

[2] The presiding Magistrate in a preliminary inquiry has an unfettered discretion in deciding which option to adopt. The presiding Magistrate has a judicial duty to perform and is duty bound to either discharge an Accused person for want of sufficient grounds or to try the Accused person by himself or to transfer the case to another Magistrate which includes the Judge of the Sessions Court or because of sufficient grounds to commit the Accused person for trial in the High Court on a charge worded differently from the tentative charge as submitted by the prosecution.

[3] On the evidence presented by the prosecution, the presiding Magistrate in the preliminary inquiry was right to rule that there was insufficient evidence to constitute the ingredients of murder under s. 302 of the Penal Code, an offence under the purview of the High Court.

[4] The presiding Magistrate was exercising her powers under s. 140(i)(b) of the CPC by preferring a charge under s. 304 of the Penal Code and had it transferred to the Sessions Court, Kuala Kangsar.

[5] In the final analysis, having perused the record of the proceedings in the preliminary inquiry, there are no valid grounds to disturb the order of the presiding Magistrate. Accordingly, the said order was affirmed and the Accused was directed to appear before the Sessions Court, Kuala Kangsar on a charge under s. 304 of the Penal Code.

[Order of learned Magistrate affirmed. Accused ordered to appear before Sessions Court on a Charge under s. 304 Penal Code].

Cases referred to:

Voon Chin Fatt v. Public Prosecutor [1948-49] MJ supp. 131 ***(refd)***

Lian Boon Khim v. Reg [1962] MJ 18 ***(refd)***

Mary Shim v. Public Prosecutor [1962] 28 MJ 132 ***(refd)***

Theopillai v. Public Prosecutor [1956] 22 MJ 177 ***(refd)***

Re Low Kuan Meng [1962] 28 MJ 265 ***(refd)***

Indran & Anor. v. Public Prosecutor [1985] 2 MJ 408 ***(refd)***

Public Prosecutor v. Tan Choon Ang [1990] 1 CLJ 550/[1990] 1 MJ 367 ***(refd)***

Re Osman bin Abdullah [1954] MJ 237 ***(refd)***

In Re Pang Po Pah [1985] 2 MJ 214 ***(refd)***

Kang Yeong Siew v. Public Prosecutor [1928] 6 FMSLR 139 ***(foll)***

Re Chow Kim Lin [1963] MJ 130 ***(refd)***

PP v. Ng Goh Weng & Anor. [1979] 1 MJ 127 ***(foll)***

Lim Yow Choon v. PP [1972] 1 MJ 205 ***(foll)***

Legislation referred to:

Courts Ordinance 1948, s. 34

Criminal Procedure Code, ss. 139(i), (ii), (iii), 140(i) (a) (b), (ii) (1) (2), (iv), 141(i), 142(i), (ii), 143 (a) (b), 151(i)(b), 177, 385, 386

Penal Code, ss. 302, 304

Subordinate Courts Act 1948, ss. 63, 100

For the public prosecutor - Yong Zarida bte Sazali, DPP

For the accused - Gurbachan Singh; M/s. Bachan & Kartar

JUDGMENT

Hj. Abdul Malik b. Hj. Ishak JC:

The Accused, one Raja Pandian s/o Arunachala Pandaham, was charged in the Magistrate's Court, Kuala Kangsar for an offence under s. 302 of the Penal Code (FMS Cap 45) ("the Penal Code") for the murder of Subramaniam s/o Ponnusamy on 7 May 1988 at about 8.00 p.m., in front of house number 344 Kampong Che'gu Yahya, Kuala Kangsar, Perak. At the close of the preliminary inquiry, the learned Magistrate took a bold step and amended the said charge to one under s. 304 of the Penal Code and accordingly directed that the Accused be tried before the Sessions Court and in the process made an order of the transfer of the case to the Sessions Court, Kuala Kangsar.

Cik Yong Zarida bte Sazali, the learned Deputy Public Prosecutor, urged this Court (in her usual candour) to exercise its revisionary powers to set aside the order made by the learned Magistrate on the ground that the learned Magistrate had erred in law in not committing the Accused to the High Court for trial as there are sufficient grounds to commit the Accused for an offence under s. 302 of the Penal Code and to direct the learned Magistrate accordingly.

As a general rule all murder trials before the High Court must be preceded by a preliminary inquiry. Chapter XVII of the Criminal Procedure Code (FMS Cap 6) ("CPC") sets out in great detail the relevant powers of the Magistrate in a preliminary inquiry. Incidentally Chapter XVII of the CPC mentions the Magistrate as being the officer responsible for conducting a preliminary inquiry. However, it is pertinent to note that by virtue of section 100 of the Subordinate Courts Act, 1948 the Presidents of the Sessions Courts (now Judges) may also conduct preliminary inquiries. Now, for the purpose of this revision, the relevant powers of a Magistrate in a preliminary inquiry are governed by ss. 139, 140, 141, 142 and 143 of the CPC which are reproduced below:

139(i) When the Accused person is brought before him the Magistrate shall proceed to hear the case for the prosecution and to take all such evidence as may be produced in support thereof and such other evidence as the Magistrate may think fit to call for.

(ii) Nothing in this section shall prevent evidence being produced in support of the prosecution or called for by the Magistrate at any stage of the proceedings provided that an opportunity is given to the Accused to cross-examine and to answer and rebut such evidence.

(iii) If the Magistrate calls for other evidence than that produced in the case for the prosecution he must record the fact on the depositions stating shortly the nature of the evidence he has called for.

140(i) When the evidence referred to in the last preceding section has been taken the Magistrate shall if he finds that there are not sufficient grounds for committing the Accused person for trial discharge him, unless it appears to the Magistrate that such person should be tried before himself or before some other Magistrate in which case he shall either -

(a) forthwith frame a charge or charges in writing and call upon the Accused to plead there to;

(b) or order the Accused to be tried before some other Magistrate.

(ii) If the Magistrate takes action under paragraph (a) of subsection (1) the case shall proceed as summary trial, provided that -

(1) it shall not be necessary for the Magistrate to recall and re-examine the witnesses for the prosecution;

(2) the Accused may require that any witness called for the prosecution may be recalled for further cross-examination.

(iv) When the Magistrate is of opinion that there are peculiar difficulties or circumstances connected with the case or when ever he shall be so directed by the Public Prosecutor he shall remand the Accused or admit him to bail and shall forthwith transmit the depositions to the Public Prosecutor in order that he may give such instructions as to him shall appear requisite.

141(i) If after taking the evidence for the prosecution the Magistrate is of opinion that on the evidence as it stands there are sufficient grounds for committing the Accused for trial he shall frame a charge under his hand declaring with what offence or offences the Accused is charged.

142(i) If the Accused elects to reserve his defence he shall forthwith be committed for trial before the High Court.

(ii) If the Accused elects to make his defence before the Magistrate the statement made by the Accused, if any, shall be taken down in writing and read over to him and shall be signed by such Magistrate and kept with the depositions and transmitted with them as hereinafter mentioned.

143. When the evidence referred to in the last preceding section has been taken the Magistrate shall -

(a) if he finds that there are not sufficient grounds for committing him for trial discharge the Accused;

(b) if he finds that there are sufficient grounds for committing him for trial commit the Accused for trial before the High Court.

It is useful to note that in a preliminary inquiry the charge against an Accused person is only tentative in nature. This tentative charge serves as a good guide for the evidence to be led by the prosecution and for the

Accused person to know of the offence of which he is alleged to have committed. In *Voon Chin Fatt v. Public Prosecutor* [1948-49] MLJ supp. 131 Spenser Wilkinson J. *inter alia*, said:

> Although under the provisions of the Criminal Procedure Code (s. 141) it is only at the conclusion of a preliminary inquiry that the Court has to frame a charge it is the practice for the prosecution to put forward charges at the commencement of the enquiry in order that the evidence led may be properly directed to the offence which it is alleged the Accused has committed.

The prosecuting officer may forthwith, in the course of a preliminary inquiry, produce his evidence by calling witnesses. It is then incumbent on the presiding Magistrate or the presiding Sessions Court Judge (as the case may be) to proceed to hear the evidence for the prosecution and to take and record all such evidence as may be produced in support thereof by the prosecution. It is pertinent to point out that the presiding Magistrate is not barred and may if he thinks fit call for such other evidence. The Accused in turn must be given the opportunity to cross-examine and to answer and rebut such evidence (see s. 139(ii) of the CPC). If the presiding Magistrate calls for evidence other than that produced in the case for the prosecution he must record that fact on the depositions stating briefly the nature of the evidence he has called for (see s. 139(iii) of the CPC).

At the end of the prosecution's case (in the preliminary inquiry) after hearing comments by the Accused or his Advocate as provided for under s. 151(i)(b) of the CPC the presiding Magistrate has four options open to him depending, of course, on the circumstances of the case. **Firstly**, if the presiding Magistrate finds that there are not **sufficient grounds** for committing the Accused person for trial **discharge him**. The discharge as envisaged in ss. 140(i) and 143(a) of the CPC legally speaking does not and cannot amount to an acquittal and therefore the prosecution can charge the Accused again in another preliminary inquiry for the same offence. In *Lian Boon Khim v. Reg* [1962] MLJ 18, Rose CJ., *inter alia*, said:

> It is no doubt the case that in summary trials before a Magistrate or in prosecution before an Assize Court or a District Court a discretion is vested in the Court as to whether to record an order of discharge or one of acquittal. Moreover it is the general practice, which has been approved in more than one judicial decision in the Courts of the Federation and in Singapore, to record an order of acquittal in such a case unless there are special circumstances favouring the alternative course. As regards, however, matters which come before a Magistrate by way of a Preliminary Inquiry it would seem that the Legislature has vested in the Magistrate no such discretion. (see the headnotes where it was reported as follows: In matters which come before a Magistrate by way of preliminary inquiry, s. 139(1) of the Criminal Procedure Code (equivalent to our s. 140(i) of the CPC) leaves him with no discretion but record an order of discharge whenever he finds that there are not sufficient grounds for committing the Accused for trial. Such an order of discharge cannot be revised by the High Court so as to substitute an order of acquittal in its place).

Hill J.A. in *Mary Shim v. Public Prosecutor* [1962] 28 MLJ 132, *inter alia*, said:

> It appears to us that this decision (a second preliminary inquiry was commenced after the Accused was discharged) in the circumstances of this case was a right and proper one in the interests of the administration of justice, a decision that was in the power of the Attorney-General to make.

The appellant in *Theopillai v. Public Prosecutor* [1956] 22 MLJ 177 was brought before the Magistrate's Court, Ipoh, on a preliminary enquiry into certain charges involving official corruption. At the conclusion of the case for the prosecution the learned Magistrate found that there were not sufficient grounds for committing the appellant for trial and discharged him. On 20 January 1956 the Public Prosecutor called for the proceedings under s. 385 of the Criminal Procedure Code, and on 9 February 1956 gave instructions under s. 386 of the Criminal Procedure Code instructing the Magistrate:

> to re-open the preliminary enquiry against Theopillai and to conduct and conclude the same by committing the said Theopillai for trial before the Court of a Judge sitting in the High Court, Ipoh...

The appellant was arrested and brought before the Magistrate. On the request before the Court the proceedings were adjourned, and the matter was brought before the High Court.

The learned Judge then heard arguments and made the following order:

> That the Magistrate, Ipoh, do not proceed in accordance with the instructions of the Public Prosecutor herein dated 9 February l956.

By way of a reference to the Court of Appeal under s. 34 of the Courts Ordinance, 1948 Mathew CJ delivering the judgment of the Court of Appeal said:

> It is not for us to say what instructions may properly be given on a preliminary enquiry that has been concluded by the discharge of an Accused person. Had it been the intention of the Legislature to give the Public Prosecutor the power to direct a Magistrate to reverse his order of discharge and commit the Accused for trial, this power would have been expressed in plain and clear language. Why, indeed, should the Public Prosecutor be given this unusual power, when he has an appropriate remedy in that he can order the holding of another preliminary enquiry before another Magistrate?

In *Re Low Kuan Meng* [1962] 28 MLJ 265, Ong J. had this to say:

> The order of acquittal was manifestly wrong. A preliminary inquiry is not a trial, and at its conclusion there is no delivery of judgment. In making an order of acquittal the learned Magistrate was pronouncing a judgment, and he was purporting to do so even in a matter which he had clearly no jurisdiction to try. The provisions of s. 140 are quite clear. "Discharge" is not synonymous with "acquittal".

The sum total of these judgments would show that if an Accused person is discharged by the presiding Magistrate in a preliminary inquiry, the Public Prosecutor should order a fresh inquiry before another Magistrate.

Section 140(i) of the CPC uses the phrase "sufficient grounds for committing". There is a dearth of reported cases on the meaning of this phrase. In *Indran & Anor. v. Public Prosecutor* [1985] 2 MLJ 408, Peh Swee Chin J (as he then was), *inter alia*, said that "the words, *viz* 'sufficient grounds for committing the Accused for trial' mean in my view that there is credible evidence, which, if believed, subject to all possible lines of defence, may result in a conviction. Credible evidence, in this context, does not mean evidence of a witness whose credibility has been established, but means, instead, evidence which is not inherently improbable not for example, that incredible story of a witness seeing a cow jump across the moon." In *Public Prosecutor v. Tan Choon Ang* [1990] 1 MLJ 367 Haider J. speaking for the bench in the same vein said:

> By sufficient evidence, it would, in my view, mean that the evidence must necessarily be credible evidence.

On the other hand, some of the reported cases have affixed the label of *prima facie* case to the phrase in question. For instance, to name but a few, see In *Re Osman bin Abdullah* [1954] MLJ 237 and *In Re Pang Po Pah* [1985] 2 MLJ 214.

Secondly, if the presiding Magistrate feels that the Accused person should be tried before himself, he shall forthwith frame a charge or charges in writing and call upon the Accused to plead thereto. (see s. 140(i)(a) of the CPC). If this option is adopted the presiding Magistrate must follow strictly the summary trial procedure.

Thirdly, if the offence is outside the jurisdiction of the presiding Magistrate he may then order the Accused to be tried before some other Magistrate (see s. 140(i)(b) of the CPC). It is pertinent to note that the presiding Magistrate is not barred from transferring the case to the President (now Judge) of the Sessions Court (see s. 100 of the Subordinate Courts Act 1948 and *In Re Pang Po Pah (supra)*). Thus, if the offence cannot be tried by the presiding Magistrate he can legally transfer the case to be tried by the Judge of the Sessions Court.

Fourthly, if the presiding Magistrate feels that after recording the evidence for the prosecution there are sufficient grounds for committing the Accused person for trial he shall frame a charge under his hand and commit the Accused for trial (see ss. 141(i) and 143(b) of the CPC). Framing of a charge or charges on any offence triable by the High Court would necessarily be for the purpose of committal. *In Re Pang Po Pah (supra)*, Wan Yahya J. (as he then was) was of the view that in framing a charge or charges for the purpose of committal to the High Court, the presiding Magistrate may depart from the tentative charge as submitted by the prosecution. This is what his Lordship said:

> It is obvious from the above that the tentative charge usually submitted before the

commencement of a preliminary enquiry is not a formal charge but merely an accusation of a probable offence and as such is not legally binding on the scope or extent of the examining Magistrate's enquiry. (see p. 216).

It is trite law that no appeal lies against an order of committal by a presiding Magistrate in a preliminary inquiry (see *Kang Yeong Siew v. Public Prosecutor* [1928] 6 FMSLR 139). It is also salutary to remember that in a preliminary inquiry a Magistrate ought to commit when there is the evidence of credible witnesses which if believed would sustain a conviction (see *Re Chow Kim Lin* [1963] MLJ 130).

In my judgment, the presiding Magistrate in a preliminary inquiry has an unfettered discretion in deciding which option to adopt. The presiding Magistrate has a judicial duty to perform and is duty bound to either **discharge an Accused person for want of sufficient grounds or to try the Accused person by himself or to transfer the case to another Magistrate which includes the Judge of the Sessions Court or because of sufficient grounds to commit the Accused person for trial in the High Court on a charge worded differently from the tentative charge as submitted by the prosecution.** The presiding Magistrate in a preliminary inquiry should be bold and independent and decide for himself which option to adopt according, of course, to the evidence as may be produced in support thereof. The presiding Magistrate in a preliminary inquiry should stop behaving like a robot and should stop committing all cases to the High Court without ascertaining whether there are sufficient grounds for committing the Accused person for trial. Sections 140(i)(a) and (b), 141(i) and 143(a) and (b) of the CPC in clear and unambiguous words give the presiding Magistrate a free hand to decide for himself the right option to adopt according to the evidence produced thereof. It is pointless to have these statutory provisions unless legal effect be given to them.

Reverting back to the phrase "sufficient grounds for committing" as discussed earlier, in my judgment such phrase would refer to that evidence which is not inherently improbable for the presiding Magistrate in a preliminary inquiry to believe.

In this revision the question to ask is this: Has the prosecution adduced evidence warranting sufficient grounds for the presiding Magistrate to invoke s. 143(b) of the CPC, that is, to commit the Accused for trial before the High Court? The learned Deputy strenuously argued that there are sufficient grounds to commit the Accused to the High Court under s. 302 of the Penal Code.

Another question to ask is this: Was the presiding Magistrate right in exercising her powers under s. 140(i)(b) of the CPC, that is, transferring the case under s. 304 of the Penal Code to be tried by the Judge of the Sessions Court at Kuala Kangsar? With equal force, the learned Counsel argued that the presiding Magistrate rightly took the course which she took.

Before exercising my revisionary powers, I have to appraise the evidence as adduced before the presiding Magistrate in the preliminary inquiry. The best method to do this is to examine with a toothcomb the record of the proceedings of the preliminary inquiry in order to satisfy myself whether the presiding Magistrate had made the right order.

At the outset, I must at once say that the preliminary inquiry was badly conducted by the prosecution. The prosecution should assist the presiding Magistrate in a preliminary inquiry by providing evidence which is not inherently improbable so as to constitute "sufficient grounds" for the Accused to be committed for the offence of murder to the High Court. Though the cautioned statement was tendered by the prosecution and marked as exhibit (P34), yet the record of the proceedings do not reflect this. Again no where is it recorded in the record of the proceedings as to whether the cautioned statement of the Accused was admitted voluntarily without there being a trial within a trial to determine its admissibility. The presiding Magistrate ought to have recorded painstakingly every detail that transpired in the preliminary inquiry on a separate sheet of paper which is considered as the notes of evidence separate from the deposition of witnesses which are normally recorded in the standard Court's form number 149. At any rate, it is pertinent to point out that it is the duty of the presiding Magistrate in law in a preliminary inquiry to decide on the admissibility of the cautioned statement

(see the decision of Suffian LP. (as he then was) in *PP v. Ng Goh Weng & Anor*. [1979] 1 MLJ 127). Fortunately Mr. Gurbachan Singh, learned Counsel for the Accused in the preliminary inquiry and who appeared in this revision informed the Court that the cautioned statement was admitted at the behest of the prosecution without any objection from the defence and accordingly the cautioned statement was marked as exhibit (P34) without the need of a trial within a trial.

Now, as the cautioned statement was part of the evidence for the prosecution (*Lim Yow Choon v. PP* [1972] 1 MLJ 205) the presiding Magistrate is entitled to look at the cautioned statement to see whether there is evidence which is not inherently improbable so as to constitute "sufficient grounds" for the Accused to be committed to the High Court (see s. 139(i) of the CPC which says:

> ... and to take all such evidence as may be produced in support thereof and such other evidence as the Magistrate may, think fit to call for.)

The presiding Magistrate did just that and she rightly considered the cautioned statement in its correct perspective.

In the cautioned statement, the Accused stated that there was a direct confrontation between his neighbours numbering seven to eight persons with his mother. Abusive words were used by the neighbours, aimed specifically at his mother. The Accused's father interceded to end the quarrel. This angered the deceased who armed with a knife tried to stab the Accused's father. On seeing this, the Accused swiftly reacted by pushing his father aside thereby avoiding the attack. The deceased then turned the knife at the Accused, bent on stabbing the latter. Fortunately the Accused managed to grab Ravi (the deceased's son) and used him as a shield. The deceased accidentally stabbed his own son (Ravi) in the course of the scuffle with the Accused. The Accused quickly grabbed the hand of the deceased (who was at that time still holding onto the knife), turned the knife towards the abdomen of the deceased and stabbed him. The pathologist in his evidence did not state that the wound was sufficient in the ordinary course of nature to cause death. However, the pathologist was emphatic in that the weapon used was a knife.

The witnesses for the prosecution, especially deponents number 1, 2 and 3 were interested witnesses. They gave perjured evidence in the preliminary inquiry especially deponent number 1. The evidence adduced must be taken in its totality and cannot be taken out of its context. I am of the considered view that on the evidence presented by the prosecution, the presiding Magistrate in the preliminary inquiry was right to rule that there is insufficient evidence to constitute the ingredients of murder under s. 302 of the Penal Code, an offence under the purview of the High Court.

The presiding Magistrate towards the conclusion of the preliminary inquiry made the following order:

> Setelah mendengar dan meneliti semua keterangan yang dikemukakan oleh pendakwa dan setelah mendengar hujah-hujah pihak pendakwa dan pembela, Mahkamah mendapati tidak terdapat alasan-alasan yang mencukupi (sufficient grounds) untuk memerintahkan YKT dihantar untuk dibicara di Mahkamah Tinggi.
>
> Walaubagaimanapun, Mahkamah mendapati terdapat elemen-elemen yang diperlukan untuk menuduh YKT di bawah s. 304 Kanun Kesiksaan.
>
> Dengan itu Mahkamah sekarang meminda pertuduhan terhadap YKT daripada tuduhan di bawah s. 302 Kanun Kesiksaan kepada s. 304 Kanun Kesiksaan dan memerintahkan dipindahkan ke Mahkamah Sesyen, Kuala Kangsar untuk sebutan.

It is apparent from the order of the presiding Magistrate that by preferring a charge under s. 304 of the Penal Code and having it transferred to the Sessions Court, Kuala Kangsar the presiding Magistrate was exercising her powers under s. 140(i)(b) of the CPC. Section 140(i)(b) of the CPC reads thus:

> order the Accused to be tried before some other Magistrate.

Now, as stated earlier by virtue of s. 100 of the Subordinate Courts Act 1948 the Presidents of the Sessions Court (now Judges) may conduct preliminary inquires. Since in this revision the Magistrate conducted the preliminary inquiry it is no bar for her to transfer the case to the Sessions Court, Kuala Kangsar under s. 177 of the CPC as the punishment in s. 304 of the Penal Code clearly falls within the jurisdiction of the Sessions Court (see s. 63 Subordinate Courts Act 1948).

The order of the presiding Magistrate in the preliminary inquiry appears to be supported by the case of *Re Osman bin Abdullah* [1954] MLJ 237 where Bellamy J. said:

> When all the evidence has been taken, the Magistrate's duty simply is to inquire, has a *prima facie* case been made out against the Accused by credible evidence? If the answer to this question is in the affirmative, then the Magistrate is bound to commit the Accused for trial. On the other hand, if the answer is in the negative, the magistrate is bound to discharge the Accused, **unless the evidence discloses an offence over which he has jurisdiction in which case he may either deal it himself or order it to be tried by another Magistrate.**
> (the emphasis is mine).

In the final analysis, having perused the record of the proceedings in the preliminary inquiry, I am satisfied that there are no valid grounds for me to disturb the presiding Magistrate's order and accordingly I affirm the said order and direct the Accused to appear before the Sessions Court, Kuala Kangsar on 27 April 1993 on a charge under s. 304 of the Penal Code.

Order accordingly.